

PROJECT NO. 47302

AMENDMENTS TO 16 TAC § 24.121	§	PUBLIC UTILITY COMMISSION
AND ADDITION OF NEW § 24.126 TO	§	
IMPLEMENT LEGISLATION	§	OF TEXAS
REGARDING SUBMETERING AND	§	
ALLOCATED WATER AND SEWER	§	
UTILITY SERVICES - COMPLAINTS	§	
PROCESS AND RESTITUTION	§	

**ORDER ADOPTING AN AMENDMENT TO §24.121 AND NEW §24.126
AS APPROVED AT THE APRIL 12, 2018 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §24.121 relating to general rules and definitions with changes to the proposed text as published in the November 10, 2017 issue of the *Texas Register* (42 TexReg 6291) and new §24.126 relating to complaint jurisdiction without changes to the proposed text as published in the November 10, 2017 issue of the *Texas Register* (42 TexReg 6291).

The amendment and new rule regarding submetering and allocated water and sewer utility services as well as establishing a complaint process and restitution implement Senate Bill 873 (SB 873), 85th Texas Legislature, Regular Session. The amendments and new section are adopted under Project 47302.

Section 24.121

The commission proposes non-substantive changes to correct the word “sever” in §24.121(b) to “sewer” and to change the capitalization of the word “Condominium” in the definition portion of §24.131(c)(3) to a lower case “condominium”.

SB 873 amended Texas Water Code §13.501 (TWC) to add new definitions for the terms “condominium manager” and “utility costs,” and amended the existing definition of “owner.” In addition, SB 873 added new TWC §13.505(a) to define the term “overcharge.” The commission adds new §24.121(c)(3) to define the term “condominium manager” and renumbers the definitions thereafter for consistency purposes. The commission also adds new §24.121(c)(11) and (17) to define the terms “overcharge” and “utility costs,” respectively. To add clarity to the rules, the commission adds new §24.121(c)(16) to define the term “undercharge.” The commission reorders the definitions so that they are in alphabetical order.

SB 873 also amended TWC §13.503 to add new subsection (f), which specifies that the amendments do not limit the owner, operator or manager from billing or collecting for any amount unrelated to water or sewer submetering utility costs. Similarly, SB 873 amended TWC §13.5031 to add new subsection (b), which specifies that the amendments to TWC §13.5031 do not limit the owner, operator or manager from billing or collecting for any amount unrelated to water or sewer nonsubmetering utility costs. The commission amends §24.121(b) to make this specification.

Section 24.126

SB 873 made changes to TWC §13.505(b) to specify that the commission has exclusive jurisdiction under TWC Chapter 13 regarding submetering and allocated utility service. The commission adds new §24.126(a) to make this specification.

In addition, SB 873 amended TWC §13.505(c) to establish a complaints and hearings process, whereby a complainant can appear remotely for a hearing, and specified that the commission shall require the owner or manager to repay the complaining tenant the amount overcharged if the amount is determined to be valid. The commission adds new §24.126(b) to implement this subsection.

Lastly, SB 873 amended TWC §13.505(d) to stipulate that any changes to TWC §13.505 do not limit or impair the commission's enforcement authority under TWC Subchapter K and specified that the commission may assess an administrative penalty for a violation under this chapter. The commission adds new §24.126(c) to implement this section.

A public hearing was not requested; therefore, no hearing was held on the proposed amendment or addition. No comments were filed regarding the proposed amendment or addition after the Open Meeting held on October 26, 2017.

The amendment and new section are adopted under TWC §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: TWC §13.041(b)

§24.121. General Rules and Definitions.

- (a) **Purpose and scope.** The provisions of this subchapter are intended to establish a comprehensive regulatory system to assure that the practices involving submetered and allocated billing of dwelling units and multiple use facilities for water and sewer utility service are just and reasonable and include appropriate safeguards for tenants.
- (b) **Application.** The provisions of this subchapter apply to apartment houses, condominiums, multiple use facilities, and manufactured home rental communities billing for water and wastewater utility service on a submetered or allocated basis. The provisions of this subchapter do not limit the authority of an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility to charge, bill for, or collect rent, an assessment, an administrative fee, a fee relating to upkeep or management of chilled water, boiler, heating, ventilation, air conditioning, or other building system, or any other amount that is unrelated to water and sewer utility service costs.
- (c) **Definitions.** The following words and terms, when used in this subchapter, have the defined meanings, unless the context clearly indicates otherwise.
- (1) **Allocated utility service**--Water or wastewater utility service that is master metered to an owner by a retail public utility and allocated to tenants by the owner.
 - (2) **Apartment house**--A building or buildings containing five or more dwelling units that are occupied primarily for nontransient use, including a residential condominium whether rented or owner occupied, and if a dwelling unit is rented, having rent paid at intervals of one month or more.

- (3) **Condominium manager**--A condominium unit owners' association organized under Texas Property Code §82.101, or an incorporated or unincorporated entity comprising the council of owners under Chapter 81, Property Code. **Condominium Manager** and **Manager of a Condominium** have the same meaning.
- (4) **Customer service charge**--A customer service charge is a rate that is not dependent on the amount of water used through the master meter.
- (5) **Dwelling unit**--One or more rooms in an apartment house or condominium, suitable for occupancy as a residence, and containing kitchen and bathroom facilities; a unit in a multiple use facility; or a manufactured home in a manufactured home rental community.
- (6) **Dwelling unit base charge**--A flat rate or fee charged by a retail public utility for each dwelling unit recorded by the retail public utility.
- (7) **Manufactured home rental community**--A property on which spaces are rented for the occupancy of manufactured homes for nontransient residential use and for which rental is paid at intervals of one month or longer.
- (8) **Master meter**--A meter used to measure, for billing purposes, all water usage of an apartment house, condominium, multiple use facility, or manufactured home rental community, including common areas, common facilities, and dwelling units.
- (9) **Multiple use facility**--A commercial or industrial park, office complex, or marina with five or more units that are occupied primarily for nontransient use and are rented at intervals of one month or longer.
- (10) **Occupant**--A tenant or other person authorized under a written agreement to occupy a dwelling.

- (11) **Overcharge**--The amount, if any, a tenant is charged for submetered or nonsubmetered master metered utility service to the tenant's dwelling unit after a violation occurred relating to the assessment of a portion of utility costs in excess of the amount the tenant would have been charged under this subchapter. **Overcharge** and **Overbilling** have the same meaning.
- (12) **Owner**--The legal titleholder of an apartment house, a manufactured home rental community, or a multiple use facility; and any individual, firm, or corporation expressly identified in the lease agreement as the landlord of tenants in the apartment house, manufactured home rental community, or multiple use facility. The term does not include the manager of an apartment home unless the manager is expressly identified as the landlord in the lease agreement.
- (13) **Point-of-use submeter**--A device located in a plumbing system to measure the amount of water used at a specific point of use, fixture, or appliance, including a sink, toilet, bathtub, or clothes washer.
- (14) **Submetered utility service**--Water utility service that is master metered for the owner by the retail public utility and individually metered by the owner at each dwelling unit; wastewater utility service based on submetered water utility service; water utility service measured by point-of-use submeters when all of the water used in a dwelling unit is measured and totaled; or wastewater utility service based on total water use as measured by point-of-use submeters.
- (15) **Tenant**--A person who owns or is entitled to occupy a dwelling unit or multiple use facility unit to the exclusion of others and, if rent is paid, who is obligated to pay for the occupancy under a written or oral rental agreement.

- (16) **Undercharge**--The amount, if any, a tenant is charged for submetered or nonsubmetered master metered utility service to the tenant's dwelling unit less than the amount the tenant would have been charged under this subchapter. **Undercharge** and **Underbilling** have the same meaning.
- (17) **Utility costs**--Any amount charged to the owner by a retail public utility for water or wastewater service. **Utility Costs** and **Utility Service Costs** have the same meaning.
- (18) **Utility service**--For purposes of this subchapter, utility service includes only drinking water and wastewater.

§24.126. Complaint Jurisdiction.

- (a) **Jurisdiction.** The commission has exclusive jurisdiction for violations under this subchapter.

- (b) **Complaints.** If an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a commission rule regarding utility costs, the person claiming the violation may file a complaint with the commission and may appear remotely for a hearing.

This agency certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority to adopt. It is therefore ordered by the Public Utility Commission of Texas that §24.121 relating to general rules and definitions is hereby adopted with changes to the text as proposed and new §24.126 relating to complaint jurisdiction is hereby adopted without changes to the text as proposed.

Signed at Austin, Texas the _____ day of April 2018.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER